

Message Text

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TO AMEMBASSY CANBERRA IMMEDIATE

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FOLLOWING REPEAT GENEVA 5670 ACTION INFO MEXICO USUN NEW YORK
OECD PARIS TREASURY DEPT WASHDC SECSTATE DATED 9/9/74.

QUOTE LIMITED OFFICIAL USE GENEVA 5670

TREASURY PASS BRADFIELD

E.O. 11652: N/A

TAGS: EGEN, UNCTAD, OECD

SUBJECT: UNCTAD TDB XIV: OECD CONSULTATIONS ON CHARTER OF
ECONOMIC RIGHTS AND DUTIES

REF: GENEVA 4654

1. SALTER (EC) AND BLACK (OECD) HAVE AT CURRENT SESSIONS
OF CONTACT GROUP NOTED IMPORTANCE THEIR ORGANIZATIONS
ATTACHED TO CONSULTATIONS NEXT WEEK AT OECD ON ECONOMIC
ISSUES TO COME BEFORE UNGA, INCLUDING CHARTER OF
ECONOMIC RIGHTS AND DUTIES. FOLLOWING COMMENT OF USDEL ON
CHARTER MAY BE OF USE TO USREF AT THOSE CONSULTATIONS.

2. NARROWING OF DIVERGENCES ACCOMPLISHED AT CONTACT
GROUP SESSION WAS SLIGHT. WHILE BRILLANTES FORMULA,
AT INSISTENCE OF GROUP B, WAS TAKEN AS BASIS OF DISCUSSION ON
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NATIONALIZATION ISSUES, RESULT WAS TO DEMONSTRATE

THAT GROUP OF 77 IS UNWILLING TO ACCEPT THE PRINCIPAL POINTS OF THAT FORMULA THAT MAKE IT ATTRACTIVE TO GROUP B, I.E., RESPECT FOR INVESTMENT AGREEMENTS AND JUST COMPENSATION FOR NATIONALIZED PROPERTY. THEY ARE WILLING TO ACCEPT THE CONCESSIONS THE FORMULA AFFORDS TO GROUP OF 77 VIEWPOINTS ON REGULATION OF FOREIGN INVESTMENT AND MNC'S WITHOUT COMPENSATORY CONCESSIONS. ACCORDINGLY, THE OUTLOOK FOR AGREEMENT AT THE FURTHER ROUND OF INFORMAL CONSULTATIONS THAT WILL TAKE PLACE BEFORE UNGA SECOND COMMITTEE TAKES UP THE CHARTER IS POOR. DIM OUTLOOK ACCENTUATED BY REFUSAL OF GROUP OF 77 TO GO ALONG WITH MEXICAN PROPOSAL TO DETACH RELATIVELY UNDEBATED AND CONTENTIOUS SUBJECTS FROM CHARTER.

3. ANY POSSIBILITY THERE MAY BE OF THE GROUP OF 77 MODIFYING ITS VIEWS, ACCEPTING THE ESSENTIALS OF THE BRILLANTES FORMULA, AND OTHERWISE AGREEING TO DROP FROM THE CHARTER RELATIVELY UNDEBATED PROPOSALS GROUP B CANNOT ACCEPT, SUCH AS ENDORSEMENT OF PRODUCERS CARTELS, INDEXATION, AND FULL COMPENSATION FOR RAVAGES OF COLONIALISM, OCCUPATION, APARTHEID, ETC., LIES IN CONVINCING IT THAT, IF IT DOES NOT DO SO AND PRESSES CHARTER TO A VOTE, LEADING GROUP B MEMBERS WILL VOTE AGAINST THE CHARTER. IF GROUP OF 77 CONCLUDES THAT, IN A VOTING CRUNCH, GROUP B WILL ACT AS IT ACTED AT SIXTH SPECIAL SESSION, OR EVEN ABSTAIN, IT IS THE LIKELIER TO REMAIN INTRANSIGENT. BUT IF IT GATHERS IMPRESSION THAT THE USG AND A FEW OTHERS, LIKE FRG, FRANCE, AND HOPEFULLY UK AND JAPAN, WILL ACTUALLY VOTE AGAINST, THERE IS SOME CHANCE THAT AN ACCEPTABLE CHARTER CAN STILL BE NEGOTIATED.

4. ON MERITS OF CASE, IF THE CHARTER IS PUSHED TO A VOTE WITH DIFFERENCES ESSENTIALLY UNRESOLVED, IT IS BELIEVED THAT USG INTERESTS REQUIRE A NEGATIVE VOTE. A NEGATIVE VOTE WOULD HAVE FOLLOWING ADVANTAGES. IT WOULD WEAKEN THE INTERNATIONAL FORCE OF PROPOSITIONS THAT RUN COUNTER TO USG INTERESTS. IT WOULD ENABLE USG TO REBUT CITATIONS OF CHARTER AGAINST ITS INTERESTS AS BEING CITATIONS OF A CONTESTED RECOMMENDATION OF UNGA, OF NO VALUE AS AN ACCURATE RENDERING OF THE PRINCIPLES WHICH LIMITED OFFICIAL USE

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AVE ACCELTED AS GOGERNING THEIR INTERNATIONAL ECONOMIC RELATIONS. IT WOULD BLOCK RELIANCE UPON THE CHARTER AS AN INSTRUMENT THAT IS WITHER DECLARATORY OF INTERNATIONAL LAW OR A SOURCE OF IT. IT WOULD NOT EMBARRASS THE USG -- AS DO THE RESOLUTIONS OF THE SIXTH SEPCIAL SESSION -- WHEN IT PURSUES POLICIES CONTRARY TO THE CHARTER. IT WOULD TEND RELATIVELY TO EASE PRESSURES
9, 7 & 59 '98, 8, 43 9)7589, -,\$.3- 743 8.0)3.3,58,&

5#3 :-4534, WHICH WOULD BE A WELCOME CONTRAST TO THE CONSTANT PRESSURE THAT IS EXERTED FOR IMPLEMENTATION OF RESOLUTIONS OF SIXTH SPECIAL SESSION. TO THE EXTENT THAT THE CHARTER COVERS ISSUES COVERED BY RESOLUTIONS OF SIXTH SPECIAL SESSION, A NEGATIVE VOTE WOULD GO SOME WAY TOWARDS RECOVERING GROUND LOST BY UNANIMOUS ADOPTION OF THOSE RESOLUTIONS. IT WOULD PLACE THE GROUP OF 77 ON NOTICE THAT, ON ECONOMIC ISSUES, THE USG HAS THE COURAGE OF ITS OGTIS AND THAT THERE ARE LIMITS BEYOND WHICH IT CANNOT BE PUSHED. IT WOULD ENHANCE THE CREDIBILITY OF USG, WHICH WAS TARNISHED BY ITS PARTICIPATION IN ADOPTING RESOLUTIONS OF SIXTH SPECIAL SESSION WITHOUT OBJECTION AFTER IT HAD STRONGLY MAINTAINED THAT IT COULD NOT POSSIBLY ACCEPT CERTAIN PROVISIONS OF THOSE RESOLUTIONS, SUCH AS THOSE BEARING ON NATIONALIZATION. IT WOULD UPHOLD THE STATEMENT BY SECRETARY OF STATE TO UNGA THAT USG WILL ONLY SUPPORT A BALANCED CHARTER THAT TAKES ACCOUNT OF THE INTERESTS OF DEVELOPED AS WELL AS LDC'S. A NEGATIVE VOTE WOULD PLEASE MANY CONCERNED INTERESTS IN PRIVATE SECTOR, SUCH AS AMERICAN BAR ASSOCIATION, WHOSE HOUSE OF DELEGATES HAS UNANIMOUSLY CALLED ON USG NOT TO SUPPORT A CHARTER THAT IS NOT SUBJECTED TO OBLIGATIONS OF INTERNATIONAL LAW.

5. DISADVANTAGES OF A NEGATIVE VOTE ARE THAT IT WOULD PAIN MEXICAN PRESIDENT AND GROUP OF 77; PROBABLY PLACE THE USG IN RELATIVELY ISOLATED POSITION OF OPPOSING A CHARTER WHICH THE GREAT BULK OF UN MEMBERSHIP SUPPORT; AND LEND APPARENT SUPPORT TO THE CHARGE THAT USG OPPOSES PROGRESSIVE PRINCIPLES OF INTERNATIONAL LAW AND INTERNATIONAL ECONOMIC RELATIONS WHICH CONDUCE TO WELLBEING OF THE WORLD'S UNDERPRIVILEGED.

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6. IN USDEL'S VIEW, THESE DISADVANTAGES ARE MORE APPARENT THAN REAL, AND IN ANY EVENT ARE MUCH OUTWEIGHED BY ADVANTAGES OF A NEGATIVE VOTE. MANY ELEMENTS OF CHARTER AS GROUP OF 77 PROPOSE IT ARE IN FACT REGRESSIVE RATHER THAN PROGRESSIVE. SOME OF THEM, SUCH AS UNBRIDLED EXPROPRIATION AND PRODUCERS CARTELS, WOULD PREJUDICE RATHER THAN PROMOTE THE WORLD ECONOMY. MOREOVER, EVEN IF USG WERE EITHER TO ABSTAIN OR VOTE FOR WITH RESERVATIONS IN FASHION AKIN TO THAT OF SIXTH SPECIAL SESSION, PRESUMABLY IT COULD ONLY DO SO WITH FAR-REACHING RESERVATIONS. THOSE RESERVATIONS WOULD DISPLEASE MEXICO... AND UNALIGNED ONLY SOMEWHAT LESS THAN A NEGATIVE VOTE, AS AMB HOVEYDA'S REMARKS IMMEDIATELY FOLLOWING UPON STATEMENT OF AMB SCALI'S RESERVATIONS AT SIXTH SPECIAL SESSION SUGGEST. SUCH A COURSE WINS FOR

USG ONLY THE MOST EXIGUOUS AND EVANESCENT GOODWILL. IF USG
PROCEEDED TO ACT IN CONFLICT WITH CHARTER IT HAD NOT
VOTED AGAINST AND TO RESTATE ITS RESERVATIONS, AS IT WOULD, IT
WOULD INCUR THE SAME LDC ANTAGONISM IT NOW REAPS IN RESPECT
OF THE RESOLUTIONS OF SIXTH SPECIAL SESSION. MORE
IMPORTANT, EVEN AN ABSTENTION, (STILL MORE A POSITIVE VOTE)
--WITH THE RESULT OF THE CHARTER BEING ADOPTED BY CIRCA
125 TO ZERO WITH ABOUT TEN ABSTENTIONS -- WILL PERMIT
THE GROUP OF 77 TO CITE THE CHARTER AS SETTING FORTH
UNOPPOSED, IF NOT BINDING, PRINCIPLES OF INTERNATIONAL
ECONOMIC RELATIONS, INDEED OF INTERNATIONAL LAW. HISTORY
OF UN DEMONSTRATES THAT WHERE THE WEST LACKED THE COURAGE
OF ITS CONVICTIONS AND FAILED TO VOTE NEGATIVELY ON UN
DECLARATIONS BUT CONTENTED ITSELF WITH ABSTENTION OR
POSITIVE VOTE COUPLED WITH A STATEMENT OF RESERVATIONS,
SUCH DECLARATIONS HAVE COME TO BE ACCEPTED AS AUTHORITATIVE,
E.G., DECLARATIONS ON COLONIALISM AND NON-INTERVENTION.
FACT OF ABSTENTION IS TREATED AS EQUIVALENT TO ABSENCE
OF PROTEST; RESERVATIONS ATTACHED TO A POSITIVE VOTE
TEND TO DISAPPEAR. IF CURRENT STRENUOUS EFFORTS OF
USG TO MAINTAIN
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